

**UNITED STATE OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
Region 28**

<b>IMPACT WELLNESS CENTER INC.,</b>	:	
	:	
<b>Respondent,</b>	:	
<b>and</b>	:	<b>Case Nos.   28- CA-221411</b>
	:	<b>28-     CA-223540</b>
<b>MELISSA AMBER TREJO, an Individual,</b>	:	
	:	
<b>Charging Party,</b>	:	<b><u>RESPONDENT’S</u></b>
<b>and</b>	:	<b><u>POST-HEARING BRIEF</u></b>
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	:	
<b>LAWRENCE R. THOMAS, an Individual,</b>	:	
	:	
<b>Charging Party.</b>	:	
	:	

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**I.M.P.A.C.T. WELLNESS CENTER INC.,** (“IWC”) submits the following post-hearing brief of law and argument in the above-captioned case.

**ISSUES**

The Complaint alleges that I.M.P.A.C.T. Wellness Center has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. The complaint alleges that from April 15 to May 22, 2018 Trejo and Thomas engaged in concerted activities with other employees for the purposes of mutual aid and protection and concertedly complained to IWC regarding wages, hours, and working conditions, by raising concerns with other employees and with IWC about wages, hours, and working conditions, including, but not limited to: lack of organization and communication by management; lack of necessary training, information, resources, and staffing; failure to reimburse employees for work-related expenses; and failure to pay employees timely and fully. The complaint also alleges that IWC, through Carolyn

Pridgeon, interrogated employees about their protected activities and threatened them with termination because of these activities. Finally, the complaint alleges that Trejo and Thomas were discharged because they engaged in protected activity and to discourage employees from engaging in these or other concerted activities.

## **I. STATEMENT OF CASE**

Carolyn Pridgeon (Pridgeon) is the founder and executive director of I.M.P.A.C.T. Wellness Center (“IWC”). (Tr. 31: 5-6). IWC is a non-profit located in Spring Valley. (Tr. 31). IWC is an out-of-time school program licensed with the Las Vegas Urban League. (Tr. 31). IWC has a contract with the Department of Family Service. IWC has pre-school programs, before & after school programs, and a summer camp. (Tr. 31). These programs are behavior modification programs. (Tr. 31). The programs offered at IWC are for the youth and children of Las Vegas who have mental health disorders, behavior disorders, educational deficits, and recreational deficits. (Tr. 31.) IWC is the first facility in the state of Nevada to offer this out-of-time school, behavior modification program.

Because IWC is a trailblazing facility, each phase of IWC development presents new challenges. Pridgeon was the only full-time employee, until its expansion in 2018. When IWC transitioned from a profit to non-profit facility, it created a three-panel advisory board. Pridgeon, Amia Mullholand, and Gloria Holloway make-up the advisory board. (Tr. 35).

Pridgeon is the only advisory board member that is at IWC full-time. (Tr. 35). As the founder, Pridgeon is the heart of IWC with a long list of responsibilities. Pridgeon is the programmer. (Tr. 31). She creates the curriculum, lesson plans, and daily activities for the kids. (Tr. 32). Pridgeon also coordinates the transportation route; verifies attendance; communicates with the schools; attends IEP meetings; and attends court during custody cases.

(Tr. 32). Holloway is the president of the board and she provided the startup investment for IWC. (Tr. 35). Holloway provides administrative support and works 3-4 days per week, approximately 12-16 hours per week. (Tr. 35; Tr. 69). Amia Mullholand (“Mullholand”) is the Clinical Supervisor for IWC. (Tr. 184: 7-20). Mullholand advises on clinical matters as it relates to mental health questions in the field. (Tr. 185: 1-4). Mullholand has a limited role and is rarely at IWC. (Tr. 195). Mullholand provides monthly clinical trainings for employees and clinical consultations for employees’ cases. (Tr. 185: 20-24).

In May 2018, IWC had seven (7) additional staff members. The staff members at IWC during the time in question were Felicia Thomas, Marco Walker, Mr. Vic, Brookelynn Elder, Lawrence Thomas, Melissa Trejo, and Keisha Castleberry. Felicia Thomas was the acting clinician who worked inside of IWC as a contracted full-time therapist until her contract expired in June 2018. (Tr. 36-37). Felicia Thomas was the treating therapist for Heavenly. (Tr. 36). Marco Walker was the transportation coordinator before Melissa Trejo accepted the position on May 17, 2018. (Tr. 58.). Mr. Vic was a driver. (Tr. 58). Brookelynn Elder (“Elder”), a Master of Social Work graduate student, was a facilitator at IWC. (GC Exh.: 8(a): 8). Lawrence Thomas (“Lawrence”) was hired on April 17, 2018 as an Early Start Adolescent Program Provider. (R. Exh. 4). Melissa Trejo (“Trejo”) was hired on May 5, 2018 as an Adolescent Support Staff and Driver. (R. Exh. 3). Keisha Castleberry was hired on May 17, 2018 as a business manager performing administrative assistance duties for Pridgeon.<sup>1</sup> (Tr. 66).

Around the first week of May 2018, Felicia Thomas raised concerns to Pridgeon about Lawrence’s ability to do his job, especially with “runners.” (Tr. 49: 16-21). Ms. Thomas told

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<sup>1</sup> <sup>1</sup>No one has been able to contact Keisha Castleberry since she was involved in an accident sometime around Memorial Day. (Tr. 92).

Pridgeon that a child went into “tantrum mode” and that Lawrence grabbed the child by the shirt when he ran past Lawrence’s wheelchair. (Tr. 50). Ms. Thomas informed Pridgeon that she had addressed this behavior with Lawrence, letting him know that under no circumstances is he allowed to touch the children. (Tr. 50).

Around this same time, Lawrence’s job coach contacted Pridgeon and informed her that this is the first job Lawrence has had working with children, he was on disability, and that he was unable to work full-time. (Tr. 48, 50). Lawrence’s job coach requested that his hours be reduced to part-time. (Tr. 51-52). Pridgeon then changed Lawrence’s position to support staff and moved him to a part-time position. (Tr. 52).

After Lawrence was moved to part-time, Pridgeon saw Lawrence let a 4-year old climb in his lap. (Tr. 53). Pridgeon immediately became upset and told Lawrence that he had been reprimanded only a few days earlier for touching a child. (Tr. 53). Pridgeon advised Lawrence that he was never allowed to embrace the children. (Tr. 54). IWC has a “hands-off” policy. (Tr. 208: 9). After the lap incident with Lawrence, Pridgeon contacted Mullholand to discuss the need for training. (Tr. 54).

For employees to handle situations properly going forward, Mullholand held a de-escalation and conflict resolution training on Thursday, May17, 2018. (Tr. 208). The training course was held in two parts (Tr. 191) and lasted from about 6-8pm. (Tr. 187)<sup>2</sup>. De-escalation

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<sup>2</sup> Trejo alleges that she missed most of this training because she left early.

5 A. I got back to Impact around *10 o'clock, maybe 10:15 p.m.*

6 that night.

7 Q. And was the meeting still going on?

8 A. No, it wasn't.

9 Q. And just for the record, like how long were you actually  
10 in that meeting, the mandatory staff meeting?

11 A. About *10 to 15 minutes*.

12 Q. So it sounds like you were out for at least *a couple of*  
13 *hours*, dropping off the kids?

14 A. *That's correct. Emphasis added. (Tr. 241).*

and conflict resolution were the first topics covered. (Tr. 191). These techniques taught how to de-escalate high-need, high-behavior kids, and how to use conflict resolution techniques. (Tr. 208). The conflict resolution techniques included: two-way communications, meeting in the middle, and stance while someone's behavior is heightened. (Tr. 208: 14-19). The stance as employee at IWC should be non-confrontive, lower voice, taking a step back, and non-threatening. (Tr. 208: 23-25). This training was specifically for high-need, high-behavior kids. (Tr. 209: 10-10).

Trejo testified that she attended the de-escalation training. (Tr. 237: 3-19). Before the meeting started, Mullholand asked if there were any questions. (Tr. 238). Trejo testified that she asked when she would be paid, about two different kids, and then Brooke, a co-worker, asked about taking notes. (Tr. 238-239). Trejo further testified that they were supposed to be taking notes about what happens to the kids throughout the day. (Tr. 240: 17-24).

The Saturday following the training, Pridgeon was traveling out of state. This would be the first days Pridgeon had taken off from IWC in months. Pridgeon made sure the transportation and schedules were accessible to all staff members working on the weekend of May 19-20, 2018. (R. Exh. 1). Pridgeon wanted IWC to run smoothly in her absence. Pridgeon provided Trejo and staff with all the information, money, and tools they needed to take the kids to the skating rink trip on Saturday, May 19, 2018. Pridgeon asked not to be contacted during the weekend and trained the staff on the chain of command and the means they should use to communicate in her absence.

No one from IWC, including Trejo, contacted Pridgeon on Saturday. Trejo and Elder were the two providers that oversaw taking the kids to the skating rink. When they got there, they realized that they did not have enough money to pay for the kids to skate. Instead of returning to IWC to retrieve money or use their own money, Trejo took the kids to Burger Kind for lunch. She then began dropping the kids off early.

The next day, May 20, 2018, Trejo arrived early. It was her job to pick up the kids just like the day before. But when Trejo arrived to IWC, she had no idea who she was supposed to pick up from where. (Tr. 244-245). Trejo asked Lawrence if he know what she was supposed to do and had him look up front. (Tr. 244-245). Lawrence could not find any information up front. (Tr. 245). According to Trejo, she asked Lawrence to check Evernote because her account did not work. (Tr. 245). See *Transcript excerpt* below:

1 had a route or knew who got picked up? He sent a message on  
2 my behalf because my Evernote account did not work at all.  
3 So when he did that, they all said no, they didn't know who  
4 got picked up.

However, "Transportation Route 5/20" was on Evernote (R Exh. 1:1) and Lawrence sent a message on 5/19 acknowledging that he "got it." (R. Exh. 1:5).

Later that same day, an incident occurred with a high-need, high-behavior client that has very explosive anger issues. (Tr. 209). This client may do things like throw things, hit, cuss, and call names. (Tr. 209: 3-5). However, the techniques taught on May 17 were not used to de-escalate the situation. (Tr. 209: 18.)

According to Trejo's testimony, Heavenly walked up front and started telling her about a kid hitting her and then Keisha made her go to time out. (Tr. 249). Heavenly got up from time out and started pulling things off the walls. (Tr. 249). Contrary to the techniques Trejo had been taught a few days before, Trejo ordered Heavenly to stop pulling things off the wall. (Tr. 249). At this point, Keisha asked for Trejo to come in the kitchen with her. (Tr. 249). Heavenly was still out of control and irate. (Tr. 249). Keisha and Trejo both called Pridgeon. Pridgeon and Trejo began yelling at each other and Pridgeon requested that all further communications be sent via email. The Heavenly situation was never de-escalated, which resulted in Heavenly being taken away by ambulance and her foster family relinquishing rights that day. (Tr. 82: 2-3); (GC Exh. 6; GC Exh. 7).

The next morning, Pridgeon began making phone calls to figure out why and what actually happened at IWC over the weekend. Pridgeon had to get to the bottom of what happened because the director of Childhaven and the Department of Family Service were questioning the integrity of IWC and the safety of the kids that attend IWC. (Tr. 73). Trejo had called off work so Pridgeon

called Trejo to talk about the incident that happened with the missed field trip on Saturday and the Heavenly incident. (Tr. 82). Trejo told Pridgeon that she was asleep, sick, and had requested a day off via text message. (Tr. 82-83). She only spoke with Trejo for about two minutes. (Tr. 82). Pridgeon told Trejo to send her an email explaining in detail what happened over the weekend and what if anything Keisha did wrong or could have done differently. (Tr. 83). Pridgeon then called Lawrence to find out what happened. Lawrence told her that he did not have any issues with her or IWC. Lawrence finally told Pridgeon, “if my best isn’t good enough for you then it’s best that I just not be there.” (Tr. 108:18-21). A few hours later Trejo sent Pridgeon the requested email. (Tr. 83, GC Exh. 2). Pridgeon replied to Trejo’s email with her termination notice. (GC Exh. 2).

## **II. LAW & ARGUMENT**

The issue in the case is whether IWC violated section 8(a)(1) on May 21, 2018. In order to prove that an 8(a)(1) violation occurred, the General Counsel must show that: an employee engaged in concerted activity; that the employer knew the nature of the activity; the concerted activity was protected by the NLRA; AND the employer was motivated by the employees protected concerted activities when it took the adverse action.

The General Counsel has failed to meet the essential elements.

### **A. Trejo and Thomas did not engage in protected activities.**

Trejo and Thomas did not engage in concerted activities with other employees for the purposes of mutual aid and protection. Section 7 of the NLRA can protect concerted activity for the "purpose of mutual aid or protection," however, this protection does not extend to an individual action for personal gripes or complaints, even where other employees: may benefit or; have an interest in the subject of the employee's complaint. (*Meyers I*, 268 N.L.R.B. 493 at 497-98.). Trejo’s email was only piece of evidence that the General Counsel offered as proof of



protected activity. This email was Trejo's explanation for how nothing that occurred over the weekend was her fault or responsibility. Trejo and Lawrence testified that the only complaints they brought to Pridgeon were about a fire extinguisher, and that they both asked her a couple questions. Asking questions about the status quo are not activities protected by the NLRA.

**B. Even if Trejo and Lawrence were engaged in protected activity, no agents at IWC had knowledge of this.**

The General Counsel offered no evidence that Pridgeon had knowledge of any protected activity. Knowledge of protected activity is an essential element of an 8(a)(1) violation. The General Counsel has failed to show IWC had this essential knowledge.

The General Counsel alleges that IWC had knowledge because Keisha Castleberry was a supervisor. Castleberry was not a supervisor as defined in the Act. The burden of proving supervisory status of an individual rests with the party asserting such status. *NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 711 (2001). Employees are statutory supervisors under the Act if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions of Section 2(11)<sup>3</sup>, (2) their "exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment," and (3) their authority is held "in the interest of the employer." *NLRB v. Health Care & Retirement Corp. of America*, 511 U. S. 571, 573-574 (1994). The Board, with regard to the term "independent judgment," maintained that at a minimum an individual must act or effectively recommend action that is "free of the control of others and form an opinion or evaluation by discerning and comparing data." *Oakwood Healthcare*, 348 NLRB 686, 693 (2006).

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<sup>3</sup> Section 2(11) of the Act, 29 U.S.C. § 152(11), defines a supervisor as: any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action...

The Board also clarified the terms “assign” and “responsibly direct” in *Oakwood*. The Board concluded that the term “assign” should be construed to refer to the act of designating an employee to a place (such as a location or department), appointing an employee to a time, or giving significant overall duties or tasks to an employee. *Id.* at 689. The phrase “responsibly direct” has been clarified by the Board to apply to individuals who not only oversee the work being performed but are held responsible if the work is done poorly or not at all. *Id.* at 691-92.

The only evidence the General Counsel offered in regard to Castleberry’s supervisory status was the testimony from Trejo. Trejo only worked at IWC for 2 weeks and was unable to ascertain her transportation route. Furthermore, Trejo was unaware of Felicia Thomas’ supervisory role, even though she worked with Ms. Thomas longer than Castleberry. Pridgeon defined Castleberry’s role as an administrative one. There is no evidence of conduct or authority that would give Castleberry supervisory status. The General Counsel has failed to prove that Castleberry was a supervisor. Because Castleberry was not a supervisor, there was no knowledge of protected activity.

### **C. IWC discharged Trejo for Cause.**

IWC discharged Trejo for cause and not because she participated in protected activity and/or to discourage employees from engaging in these or other concerted activities. Section 10(c) of the NLRA provides that the NLRB cannot order an employer to reinstate any individual as an employee who has been suspended or discharged if the employer suspended or discharged the individual "for cause" (29 U.S.C. § 160(c)). "For cause" in Section 10(c) of the NLRA means "for good cause, bad cause, or no cause at all," so long as the employer does not discipline or discharge an employee for a reason prohibited by the NLRA (*Anheuser-Busch, Inc.*, 351

N.L.R.B. 644, 647 (2007), quoting *Taracorp Indus.*, 273 N.L.R.B. 221, 222 (1984)). Trejo was terminated for the reasons given in the termination letter. (GC Exh. 5).

Trejo was hired at IWC because she claimed to have over 2 years driving experience. (R. Exh. 5). On her last day of employment, Trejo was still not competent enough to pick up kids in a timely manner. Trejo picked up kids late the last two days of her employment. Furthermore, Trejo's refusal to follow de-escalation instructions from Pridgeon and Keisha resulted, not only in a child being taken away by ambulance, but it also tarnished the reputation of IWC. Trejo sent Pridgeon a text message before 11:00am on Sunday, calling off work for Monday. (G.C. Exh.3). Trejo called off on Monday four hours before the Heavenly incident. (R.1:5). The General Counsel relies on the email Trejo sent to Pridgeon to establish that Pridgeon was involved in protected activity, however, the email is a long, insubordinate rant, where Trejo fails to take any responsibility for her own incompetence. (G.C. Exh. 2). No one at IWC had knowledge that Trejo was participating in any alleged protected activity. There is no basis in law or fact that Trejo was terminated because she participated in protected activity.

**D. IWC did not discharge Lawrence because Lawrence resigned.**

In order for there to be a violation of Section 8(a)(1) or 8(a)(3), the employee must be engaged in protected activity, there must be an adverse employment condition, and this adverse employment condition must be a result of the employer's animus toward the protected activity. *NLRB v. Wright Line*, 662 F.2d 899, 904 (1st Cir. 1981). Thomas was not involved in any protected activity. And even if he was involved in protected activity, when questioned Thomas denied any involvement and had no complaints or concerns about his working conditions. Therefore, no animus existed between IWC and Thomas's alleged protected activity.

Regardless of whether Thomas was involved in protected activity, there was no adverse employment condition caused by this activity because Thomas quit his job.

An employee that voluntarily quits cannot claim that his rights were violated. However, in *Crystal Princeton Ref. Co.*, 222 NLRB 1068 (1976), the Board gave two elements for a “constructive discharge.” The first element is that the employer must intentionally cause a change in working conditions that are so burdensome that it forces the employee to quit. Secondly, these changes must be a result of the employee’s protected activity. Even if the board finds that a reduction in Thomas’s hours forced Thomas to quit. Thomas’s hours were reduced because his job coach requested it and not because of any protected activity. Therefore, Thomas was not constructively discharged.

Lawrence resigned; therefore: IWC did not discharge Lawrence because he participated in protected activity and/or to discourage employees from engaging in these or other concerted activities. Both Lawrence and Pridgeon testified that Lawrence denied any knowledge or participation in protected activity, and that he was unaware of Trejo’s email. Lawrence resigned. But even if it is determined that Lawrence was terminated, there was no 8(a)(1) violation because there was no knowledge of protected activity.

**D. On the morning of May 21, 2018, Pridgeon contacted employees, including Trejo and Lawrence, to investigate the problems that occurred over the weekend.**

About May 21, 2018, IWC, through Carolyn Pridgeon did not interrogate or threaten employees with termination for engaging in protected activity. When Pridgeon began her investigation on the morning of May 21, she had no knowledge of any alleged protected activities. Pridgeon was investigating a major incident that occurred over the weekend and any questions presented to Trejo or Lawrence were an attempt to figure out what went wrong.

The Heavenly incident could have been worse, and it could have cost IWC more than a tarnished reputation. Pridgeon must answer to the department of family services and the Urban League when things go awry. The only reason or motivation Pridgeon had when she questioned Trejo and Lawrence was to figure out what the problem was and how to prevent it in the future.

The investigative phone calls were made in the morning. Trejo did not send, the alleged “smoking gun” email until 11:10am. It is impossible for Pridgeon to threaten employees about their protected activities without knowledge that protected activities exist. Pridgeon spoke to Trejo briefly in the morning. Pridgeon requested that Trejo send her an email of the events that transpired over the weekend. After Trejo sent the email, Pridgeon responded via email with a termination notice. It is factually impossible for Pridgeon to threaten Trejo with job loss over the phone if she terminated her via email and never spoke to her again.

The General Counsel has failed to present any evidence or testimony that Pridgeon interrogated or made threats to Trejo or Lawrence. Pridgeon called all employees during the investigation. She had no knowledge of protected activity.

### **CONCLUSION**

For the foregoing reasons, IWC requests that all charges be dismissed.

Dated: April 11, 2019

Respectfully submitted:

By: /s/ Karen Rose

Karen Rose  
National Labor Relations Advocates  
312 Walnut Street, Suite 1600  
Cincinnati, OH 45202-4038

### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been made on Region 28 of the National Labor Relations Board via the Agency's e-filing portal, and courtesy copies have been electronically served on April 11, 2019 to the following parties:

Sara Demirok  
Field Attorney  
National Labor Relations Board, Region 28  
2600 N. Central Avenue, Suite 1400  
Phoenix, AZ 85004  
(602) 416-4761  
[sara.demirok@nrlrb.gov](mailto:sara.demirok@nrlrb.gov)

By: /s/ Karen Rose  
Karen Rose  
NATIONAL LABOR RELATIONS ADVOCATES